

(2010) 06 MAD CK 0249

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 150 of 2010

Suseela

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 294, 307, 324, 341

Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 — Section 4

Citation : (2010) 06 MAD CK 0249

Hon'ble Judges : M. Chockalingam, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : S. Deenadhayalan, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the 2nd respondent, dated 05.02.2010, whereby one R. Karthik Sankar Raja, son of the petitioner, was ordered to be detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, branding him as a "Goonda".

2. The affidavit and the materials filed in support of the petition, in particular the order under challenge, are looked into. The Court heard the learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the Sponsoring Authority that the alleged detenu was to be detained under Tamil Nadu Act 14 of 1982, as he was involved in three adverse cases, as detailed below,

No.	Police	Station	&	Crime	Number	Provisions	of	Sl. law
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- 1.
Palayamkottai Police Station Cr. No. 1491/2007 Under Sections 279, 294(b),
506(i) IPC
- 2.
Palayamkottai Police Station Cr. No. 1713/2008 Under Sections 294(b), 387,
506(i) IPC and Section 4 of Tamilnadu Prevention of Women Harassment Act.
- 3.
Palayamkottai Police Station Crime Under Sections 294(b), 324, No. 95/2010
506(ii) IPC

and also in the ground case in Crime No. 99/2010, registered under Sections 341, 294(b), 307, 506(ii) IPC on the file of Palayamkottai Police Station for a crime that had taken place on 23.01.2010, in which he was arrested on the very day and remanded to judicial custody, on scrutiny of the materials placed before him, the detaining authority, the 2nd respondent herein, after recording his subjective satisfaction that the activities of the alleged detenu were prejudicial to the maintenance of public order, branded him as a "Goonda" and ordered him to be detained under Tamil Nadu Act, 14 of 1982, which is the subject matter of challenge before the Court.

4. At the time of advancing arguments on behalf of the petitioner, the learned Counsel for the petitioner submitted that the detenu moved a bail application in the ground case Crime No. 99/2010 before the District and Sessions Judge, Tirunelveli, in CrI.M.P. No. 345/2010 and the same was dismissed on 03.02.2010 and apart from that, the detenu was arrested and remanded to judicial custody in the 3rd adverse case in Crime No. 95/2010 on 23.01.2010 and he was not moved any bail application in that adverse case but, the detaining authority has stated that there was a real possibility of the detenu coming out on bail while bail application filed in the ground case was dismissed and no bail application was at all filed in the 3rd adverse case and, therefore, the observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis or material whatsoever and this shows non-application of mind on the part of the detaining authority and hence the detention order has got to be set aside.

5. Added further the learned Counsel that insofar as the ground case was concerned, the detenu was arrested, according to the arrest card, at about 13.45 hours on 23.01.2010 and when requisition was given by the respondent Police for remand to the concerned Judicial Magistrate, it is mentioned in the requisition that the occurrence in the 3rd adverse case had taken place at 18.30 hours on 23.01.2010, which would indicate that the occurrence in the 3rd adverse case had taken place subsequent to the occurrence in the ground case and it was inconsistent to the real state of affairs and in such circumstances the detaining authority should have called for a clarification from the sponsored authority but, he failed to do so and this would clearly show non-application of mind on the part of the detaining authority and on this ground also the impugned order is liable to

be dismissed. Added further the learned Counsel, there was an unexplained delay in consideration of the representation, dated 22.02.2010, made on behalf of the detenu and hence on this ground also the order of detention has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor for the State on the above contentions put-forward by the counsel for the petitioner.

7. After looking into the materials available on record and considering the submissions made on either side, the Court has to necessarily agree with the learned Counsel for the petitioner and the impugned order of detention has got to be set aside on all the three grounds urged by him.

8. It is not in controversy that the detenu was ordered to be detained under Act 14/1982 on the recommendations made by the Sponsoring Authority that he was involved in three adverse cases and in one ground case referred to above. It is true that four cases were registered against the detenu, namely three adverse cases and one ground case. Relevant portion in paragraph 6 of the grounds of detention reads as follows:

6. I am aware that Thiru R. Karthik Sankar Raja was produced before the Judicial Magistrate No. I, Tirunelveli on 23.01.2010 and remanded in Central Prison, Palayamkottai as a remand prisoner on that day itself. His remand period expires on 05.02.2010. I am aware that Thiru R. Karthik Sankar Raja is in remand in Palayamkottai Police Station Crime Numbers 95/2010 and 99/2010. I am also aware tht he has moved a bail petition before the District and Sessions Court, Tirunelveli in CrI.M.P. No. 345/2010 on 27.01.2010 in connection with the case in Palayamkottai Police Station Crime Number 99/2010 and the same was dismissed on 03.02.2010. I am also aware that there is real possibility of his coming out on bail by filing another bail petition before the same court or higher court....

9. A reading of the above would clearly indicate that the detenu moved a bail application in the ground case Crime No. 99/2010 before the District and Sessions Judge, Tirunelveli, in CrI.M.P. No. 345/2010 and the same was dismissed on 03.02.2010 and apart from that, the detenu was arrested and remanded to judicial custody in the 3rd adverse case in Crime No. 95/2010 on 23.01.2010 but he was not moved any bail application in that adverse case. Despite the same, the detaining authority in the grounds of detention has stated that there was a real possibility of the detenu coming out on bail while bail application filed in the ground case was dismissed and no bail application was at all filed in the 3rd adverse case. Hence the observation made by the detaining authority that there was a real possibility of the detenu coming out on bail was without any basis or material whatsoever and this shows non-application of mind on the part of the detaining authority and hence the detention order has got to be set aside.

10. Coming to the second contention of the learned Counsel, it is not in

controversy that in the ground case as well as in the 3rd adverse case the detenu was arrested on 23.01.2010 and he was remanded to the judicial custody on the same day. In the grounds of detention it is stated that the occurrence in the ground case was at 09.00 hours on 23.01.2010 and the occurrence in the 3rd adverse case was at 18.30 hours on 22.01.2010. A perusal of the arrest card pertaining to the ground case shows that the arrest of the detenu was at about 13.45 hours on 23.01.2010 but, in the requisition made by the respondent Police to the concerned Judicial Magistrate for the remand of the detenu, it is mentioned that the occurrence in the 3rd adverse case was at 18.30 hours on 23.01.2010 and this would indicate that the occurrence in the 3rd adverse case had taken place subsequent to the occurrence in the ground case and it was inconsistent to the real state of affairs. In such circumstances, the detaining authority should have called for a clarification from the sponsoring authority as to the inconsistency referred to above but, he has failed to do so and this, in the considered opinion of the Court, would amount to non-application of mind on the part of the detaining authority and on this ground also the impugned order is liable to be dismissed.

11. Added circumstance is the delay that was caused in consideration of the representation. As could be seen from the chart placed before the Court by the learned Additional Public Prosecutor, the representation, dated 22.02.2010, made on behalf of the petitioner, was received by the Government on 24.02.2010 and though remarks were received from the detaining on 03.03.2010 and the concerned minister had dealt with the file on 08.03.2010 itself, the rejection letter came to be prepared only on 12.03.2010, which was a minister act, after a delay of four days. Learned Additional Public Prosecutor would point out that the delay is negligible. However, in the opinion of the court, when preparation of rejection letter is only ministerial act, it should have been prepared on the same day or on the next day. The State has no explanation to offer and the delay has caused prejudice to the interest of the detenu. In the considered opinion of the Court, all the three grounds are available to the petitioner to set aside the order of detention impugned in the present petition.

12. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in No. 07/BDFGISSV/2010, dated 05.02.2010, passed by the 2nd respondent is quashed. The detenu R. Karthik Sankar Raja, S/o.Rathinasamy Nadar, is directed to be set at liberty forthwith, unless his presence, in accordance with law, is required in connection with any other case.